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IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROMAN SELEZNEV,
aka TRACK2,
aka ROMAN IVANOV,
aka RUBEN SAMVELICH,
aka nCuX,
aka Bulba,
aka bandysli64,
aka smaus,
aka Zagreb,
aka shmak,

Defendant.

MAGISTRATE CASE NO. 14-00056

**UNITED STATES' MEMORANDUM
REGARDING SCOPE OF RULE 5
JURISDICTION, AND MOTION
TO STRIKE DEFENDANT'S
MOTION FOR DISCHARGE
AND RELEASE**

I. INTRODUCTION

On March 16, 2011, a federal grand jury in the Western District of Washington returned a 28 count Superseding Indictment charging Roman Seleznev with various felonies stemming from his alleged involvement in a computer-hacking scheme, the object of which was to steal credit card numbers which would then be illegally resold and used to commit bank fraud. The Superseding Indictment alleges that Roman Seleznev trafficked in hundreds of thousands of

1 consumer credit card numbers, thereby generating millions of dollars in illicit profits.
2 Subsequent to the return of the Superseding Indictment, on January 10, 2012, a federal grand
3 jury in the District of Nevada returned another Indictment charging Roman Seleznev and others
4 with crimes similar to those outlined in the Superseding Indictment. Those charges also remain
5 pending.

6 Defendant-Indictee Roman Seleznev is a Russian national believed to reside in
7 Vladivostok, Russia. The warrants for Roman Seleznev's arrest remained outstanding until July
8 5, 2014, when a man named Roman Seleznev ("Seleznev") was taken into custody in the
9 Maldives. Seleznev was promptly transported to Guam and appeared before this Court on July
10 7, 2014. At that time, the Court scheduled an identity hearing for July 22, 2014, to determine
11 whether Seleznev is, in fact, the Roman Seleznev named in the Western District of Washington
12 Superseding Indictment.

13 On July 18, 2014, Seleznev filed a motion to continue the Rule 5 identity hearing
14 previously scheduled in this case, indicating he intended to file a "Motion for Discharge and
15 Release" pursuant to Federal Rule of Criminal Procedure 12(b)(3)(A) based on claims of an
16 illegal arrest. The government opposed the motion to continue, noting that any matters other
17 than identity should be reserved for pre-trial litigation in the Western District of Washington
18 where the indictment against Roman Seleznev is currently pending. On July 18, 2014, the Chief
19 Judge, Honorable Frances M. Tydingco-Gatewood entered a scheduling order directing the
20 parties to submit briefing on whether the District of Guam has jurisdiction to hear Seleznev's
21 proposed Motion for Discharge and Release given that the Superseding Indictment was issued by
22 the United States District Court for the Western District of Washington. On July 21, 2014, rather
23 than submit briefing on the jurisdictional issue as ordered by the Court, Seleznev instead filed his
24 Motion for Discharge and Release.

1 The government submits this memorandum to address the jurisdictional issues raised by
2 the Court and moves to strike Seleznev's Motion for Discharge and Release. Seleznev has
3 disregarded the terms of the Court's July 18th order, and the reason why is readily apparent.
4 Seleznev is not merely seeking pretrial release on bond. Rather, Seleznev claims his purportedly
5 unlawful arrest has deprived the United States of jurisdiction to try him, and he therefore seeks
6 an order from this Court releasing him unconditionally, after which he will undoubtedly flee the
7 territorial jurisdiction of the United States. However, jurisdiction over Seleznev's motion for
8 discharge and release lies not with this Court but with the Western District of Washington.

9 This case, which was charged in the Western District of Washington, is before this Court
10 only for the limited purpose of conducting the defendant's initial appearance pursuant to Federal
11 Rule of Criminal Procedure Rule 5. Because Seleznev was not charged in the District of Guam,
12 Rule 5(c)(3) restricts this Court's jurisdiction to making findings on two very discrete issues: (1)
13 whether the United States has produced an arrest warrant; and (2) whether the person before the
14 Court is the person named in that warrant. If both conditions are satisfied, Rule 5 provides that
15 the Court "*must* transfer the defendant to the district where the offense was allegedly committed"
16 for further proceedings. Fed. R. Crim. P. 5(c)(3)(D) (emphasis added). All other issues must be
17 decided in the district where the indictment is pending.

18 Accordingly, the United States respectfully requests that the Court strike Seleznev's
19 Motion for Discharge and Release and that the Court re-schedule the Rule 5 identity hearing to
20 occur as soon as possible. The government's witnesses will be available for the identity hearing
21 to be set by the Court.

22 **II. DISCUSSION**

23 **A. Rule 5 Limits this Court's Jurisdiction to the Issue of Identity.**

24 Seleznev is before this Court solely for the purpose of making an initial appearance

1 pursuant to Rule 5(c)(3). This rule provides strict limits on the scope of proceedings in the
2 removal district. Specifically, Rule 5(c)(3)(D) provides that “the magistrate judge *must* transfer
3 the defendant to the district where the offense was allegedly committed” if two conditions are
4 satisfied (emphasis added). First, the government must “produce the warrant, a certified copy of
5 the warrant, or a reliable electronic form of either.” Fed. R. Crim. P. 5(c)(3)(D)(i). Second, the
6 magistrate judge must find, under a probable cause standard, *see United States v. Antoine*, 796 F.
7 Supp. 2d 417, 420 (E.D.N.Y. 2011), that the defendant is the same person named in the
8 indictment, information or warrant. Fed. R. Crim. P. 5(c)(3)(D)(ii). The removal court’s
9 jurisdiction is thus limited to determining whether these two conditions are satisfied, and the
10 court is required to transfer the case if it makes affirmative findings on both issues. As the
11 District of Columbia Circuit explained:

12 The clear mandate of Rule [5(c)(3)] sharply limits the function and authority of the
13 magistrate, and by the same token the jurisdiction of the district court for the transferor
14 district. Where the terms of Rule [5(c)(3)] are met in a proceeding for removal in
15 furtherance of a prosecution by indictment, *that court lacks power to dismiss either the
proceeding or the prosecution.* . . . The upshot of it all is that once a certified copy of the
indictment is produced at a removal hearing, the only issue remaining litigable is the
identity of the arrestee as the indictee.

16 *United States v. Green*, 499 F.2d 538, 541 (D.C. Cir. 1974) (removal court lacked jurisdiction
17 over motion asserting that initiation of prosecution was unduly delayed) (emphasis added). ¹ *See*
18 *also In re Ellsberg*, 446 F.2d 954, 959-60 (1st Cir. 1971) (once identity was established, “the
19 removal court had no choice but to issue the removal order based on presentation of a certified
20 copy of the indictment and a copy of the arrest warrant”); *United States v. Martinez-Leon*, 565 F.
21 Supp. 2d 1131, 1134-35 (C.D. Cal. 2008) (when indictment against defendant has been issued,
22 “the sole issue before [the removal court] is defendant’s identity”).

23
24 ¹ *Green* was considering former Rule 40, which was the predecessor to Rule 5(c)(3). There is no substantive
difference between these rules; these provisions of former Rule 40 were simply relocated to Rule 5(c)(3). *See*
Fed.R.Crim.P. 40, Advisory Committee Notes, 2002 amendments.

1 Because of the limits Rule 5(c)(3)(D) places on a removal court's jurisdiction, a removal
2 court may not entertain challenges to the defendant's indictment, arrest, or prosecution. Those
3 issues must be determined in the district where the crime was committed. *See Frost v. Yankwich*,
4 254 F.2d 633, 637 (9th Cir. 1958) ("The defendant . . . was found to be the person against whom
5 the warrant was issued and against whom the prosecution is pending. . . . Petitioner's remedy, if
6 any, lies in the Illinois jurisdiction. If he has a defense, it is there that it must be presented.").
7 For example, the Ninth Circuit has held that a removal court may not entertain a motion for
8 discovery or a motion to suppress evidence (in that case a wiretap) upon which the indictment
9 was based. *Vazquez v. United States District Court for District of Nevada*, 572 F.2d 697 (9th
10 Cir. 1978) (citing *Ellsberg*); *see also Ellsberg*, 446 F.2d at 959-60 (similar). Simply put, the
11 proper forum to litigate any challenge to the prosecution is in the transferee court. As the
12 District of Columbia Circuit has recognized, while this "may appear to visit needless
13 inconvenience on arrestees whose motions to dismiss may ultimately achieve success in the
14 transferee court, there are more powerful considerations on the other side." *Green*, 499 F.2d at
15 541. "The full panoply of defenses is available to the addressee in the transferee court, and any
16 inconvenience incidental to the assertion of defense there is simply unavoidable" under the
17 express terms of Rule 5(c)(3)(D). *Id.*

18 **B. Jurisdiction to Entertain Seleznev's Motion for Discharge and Release Lies in the**
19 **District Where the Offense Occurred.**

20 As discussed above, this Court must resolve only two issues. The first (the existence of a
21 warrant) has already been addressed: the government has filed the Superseding Indictment and
22 arrest warrant with the Court. Dkt. 1, Ex. 1. Therefore, under Rule 5(c)(3)(D), "the only issue
23 remaining litigable" is identity. *Green*, 499 F.2d at 541. Under Rule 5(c)(3)(D)(ii), the Court
24 must now make a finding as to Seleznev's identity as the indictee. Under Rule 5, if the Court
finds probable cause exists to believe that the person in custody is the person named in the

1 indictment, the Court “must” transfer the case to the Western District of Washington. Fed. R.
2 Crim. P. 5(c)(3)(D).

3 The relief requested in Seleznev’s motion (discharge and release) is directly contrary to
4 this procedure and to Rule 5(c)(3)(D)’s mandate concerning the transfer of a defendant arrested
5 outside the district of indictment. That is, Seleznev’s motion seeks his release — rather than his
6 transfer — even if the Court finds both of Rule 5(c)(3)(D)’s requirements are satisfied. The clear
7 language of the rule and the authorities discussed above make clear that this is impermissible.
8 Accordingly, the United States respectfully requests that the Court follow the procedure
9 prescribed by Rule 5(c)(3)(D) by setting an immediate identity hearing, and, if probable cause is
10 shown at that hearing establishing Seleznev’s identity as the person named in the indictment,
11 enter an order transferring Seleznev to the Western District of Washington for further
12 proceedings.

13 Seleznev makes no attempt to square his request for relief with the express terms of Rule
14 5(c)(3)(D) — the rule is referenced only once in his motion papers. Furthermore, the authority
15 Seleznev does cite does not support the position that his motion may be decided by a removal
16 court. Seleznev does not cite a single case in which a removal court ordered the defendant’s
17 release, dismissal, or, indeed, any relief other than a transfer under Rule 5(c)(3). For example,
18 Seleznev’s citation to *United States v. Fuselier*, 2008 WL 352207 (W.D. La. Feb. 7, 2008) for
19 the proposition that a court overseeing an initial appearance pursuant to Rule 5 “entertained
20 defendant’s motions purportedly contesting jurisdiction” is disingenuous. *See Seleznev’s Motion*
21 *for Discharge and Release*, page 8. In *Fuselier*, the Court rejected defendant’s motions as
22 “frivolous” without any discussion of whether Rule 5 even allows such motions in the first place.
23 *Id.* at 1. This hardly supports Mr. Seleznev’s position that this Court should hear and decide the
24 merits of his Rule 12(b)(3)(A) motion.

1 Likewise, Seleznev's reliance on *United States v. Barragan-Mendoza*, 174 F.3d 1024,
2 1026, 1030 (9th Cir. 1999), to support this Court's hearing his motion for discharge is also
3 misplaced. *Barragan-Mendoza* addressed two jurisdictional issues: first, whether the
4 appellant's notice of appeal was timely and, therefore, if the Court of Appeals had jurisdiction
5 over the appeal; and second, whether the district court had jurisdiction to correct a sentence
6 under Rule 35 more than seven days after sentencing. *Id.* Notably, neither of these issues had
7 anything to do with a removal court's jurisdiction under Rule 5(c)(3). Finally, Seleznev's
8 citation to *United States v. Cervantes*, 2014 WL 1716080 (C.D. Cal. Apr. 29, 2014) is unhelpful
9 for similar reasons. In *Cervantes*, a defendant moved to vacate his conviction under 28 U.S.C. §
10 2255, arguing, among other things, that the court that heard his case did not establish subject
11 matter jurisdiction over the case. *Id.* at *2-3. While denying the motion, the court noted the
12 general principles of subject matter and personal jurisdiction in a criminal proceeding on an
13 indictment pending in the district in which the defendant *is tried*. *Id.* at *4-5. Nothing in the
14 *Cervantes* case addressed the scope of a removal court's jurisdiction under Rule 5(c)(3).

15 Seleznev's claim that he must raise these issues disputing the legality of his arrest and
16 prosecution in Guam as part of his Rule 5 proceedings is also false. Nothing a defendant does at
17 an identity hearing constitutes a waiver of any jurisdictional objection (personal or otherwise)
18 that he may wish to raise in the district where this case is pending. Seleznev is free to raise all
19 the claims identified in his motion in the Western District of Washington as a part of his pre-trial
20 proceedings. Indeed, in all of the cases cited in support of Seleznev's motion for discharge and
21 release, the defendants' arguments were heard in the district in which the indictment was
22 pending, rather than any other court in which the defendants may have made an initial
23 appearance.

24 //

1 **III. CONCLUSION**

2 Under Rule 5, the scope of a removal court's jurisdiction is extremely limited and does
3 not extend to the matters raised in Seleznev's Motion for Discharge and Release. Because Rule
4 5(c)(3) limits the Court's jurisdiction to determining whether an indictment and arrest warrant
5 exists and whether the defendant in custody is the defendant named in the indictment and arrest
6 warrant, the Court should strike Seleznev's motion and re-schedule the identity hearing to occur
7 as soon as possible.

8 RESPECTFULLY SUBMITTED this 22nd day of July, 2014.

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